

## United States Department of the Interior Fish and Wildlife Service



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March 23, 2016

Colonel Christopher G. Beck  
District Engineer  
U.S. Army Corps of Engineers  
Louisville District  
P.O. Box 59  
Louisville, KY 40201-0059

Dear Colonel Beck:

The U.S. Fish and Wildlife Service (USFWS) has reviewed Joint Public Notice LRL-2013-635-GJD. Under this Joint Public Notice, United Minerals Company, LLC (UMI) is applying for a Section 404 permit to relocate wetlands and streams to facilitate removal of subsurface coal at the proposed Seven Hills Mine in Warrick County, Indiana.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U.S. Fish and Wildlife Service's Mitigation Policy.

The applicant proposes to extract subsurface coal material, to construct levees, sediment basins and haulage roads, to conduct floodway excavation, and to construct a bridge crossing and conveyor crossing over Pigeon Creek. The proposed permit area covers 1,679.6 acres and contains a combination of undisturbed bottomland along Pigeon Creek, including approximately 7,876 feet of the Pigeon Creek channel, and previously mined land in the North Millersburg, South Millersburg and Ayrshire Mines. Total impacts from the proposed project include 510.16 acres of wetlands (462.18 acres forested, 27.13 acres emergent, 19.81 acres scrub-shrub, 1.04 acres unconsolidated bottom), 53,840 linear feet of streams (200 linear feet perennial, 8,427 linear feet ephemeral, and 45,213 linear feet intermittent), and 72.85 acres open water.

As mitigation, the applicant proposes on-site restoration of 45,413 linear feet of perennial and intermittent streams (1:1 ratio) and 4,214 linear feet of ephemeral streams (0.5:1 ratio). Proposed on-site wetland mitigation consists of reclamation of all disturbed wetlands with 510.16 acres forested wetlands. In addition, the applicant proposes 448.11 acres of off-site wetland restoration and enhancement at Greathouse Island, Posey County, Indiana.

The FWS, along with the U.S. Environmental Protection Agency (EPA) provided detailed comments under the Public Notice in a joint letter dated March 17, 2016. In addition, both agencies provided comments on preliminary plans in late 2013 and early 2014. All previous comments on the proposed Seven Hills Mine are incorporated here by reference.

### **Aquatic Resources of National Importance**

The FWS considers the Ohio River, Pigeon Creek and its forested floodplain wetlands to be aquatic resources of national importance. The bottomland hardwood forests within the Pigeon Creek floodplain are an important and productive habitat. In addition to the habitat value of natural areas, bottomland hardwoods serve a critical role in the watershed by reducing the risk and severity of flooding to downstream communities by providing areas to store floodwater. These wetlands improve water quality by filtering and flushing nutrients, processing organic material, and reducing sediment before it reaches open water.

The Pigeon Creek floodplain is recognized as an extremely valuable resource for numerous and significant wildlife species, including migratory birds, non-game wildlife, and threatened and endangered species. Portions of the corridor contain Indiana Department of Natural Resources (IDNR) wetland conservation areas, and other portions are recognized for their unusually high diversity of bird species. The permit area is bordered on the east by an Audubon Society Important Bird Area and on the southeast by the IDNR Bluegrass Fish and Wildlife Area. Bird surveys by Audubon Society members in these two areas and in the Buckskin Bottoms area upstream of the permit area reported over 200 species of birds, including 25 species of waterfowl and 14 species listed as state endangered.

The affected wetlands and other bottomland forest provide essential habitat for state endangered and federally listed species including Indiana bats (*Myotis sodalis*), northern long-eared bats (*Myotis septentrionalis*), evening bats (*Nycticeius humeralis*), cerulean warblers (*Setophaga cerulean*), northern harriers (*Circus cyaneus*), and copperbelly water snakes (*Nerodia erythrogaster neglecta*). All of these species and several state species of special concern have been documented within the permit area.

These valuable wetlands help protect both Pigeon Creek and the Ohio River. From its headwaters, Pigeon Creek flows approximately 47.5 miles bisecting downtown Evansville before joining with the Ohio River. During the 1800's, Pigeon Creek was part of the Wabash-Erie Canal and a portion of Pigeon Creek onsite is part of the former canal. Today, Pigeon Creek provides several recreational paths and fishing access for the public to enjoy. The City of Evansville has developed the Pigeon Creek Greenway Passage. This path is a multiuse trail that follows the creek and then extends along the banks of the Ohio River. In 2004, the path was designated a National Recreation Trail by the National Park Service.

The Ohio River is 981 miles long, and flows through or borders six states: Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia. Nonpoint source pollution from urban runoff, agricultural activities, and abandoned mines is a major cause of water pollution in the Ohio River. By volume, the Ohio River is the largest contributor of flow to the Mississippi River.

The river itself serves as a source of drinking water, hydroelectric energy, shipping route to the Mississippi River, recreation and fishing. There are presently several fish consumption advisories for the Ohio River.

Proposed on-site wetland mitigation consists of reclamation of disturbed wetlands. The FWS asserts that wetlands of this magnitude and in this landscape location cannot be adequately restored based on the failure of previous efforts associated with the North Millersburg Mine. The North Millersburg mined land on the east side of the Pigeon Creek floodplain was to have been restored to its pre-mining condition of bottomland forest. The finished topography on much of the reclaimed area is too high in elevation to function as bottomland forest. Whereas the original intention of the reclamation plan was to reproduce floodplain elevations with forest surrounding the impoundments, in some areas the land adjacent to the impoundments looks more like rolling hills than floodplain. The area now consists chiefly of a mixture of upland fields, upland non-forested wildlife habitat and large, shallow permanent impoundments.

Combining both on-site and off-site, the proposed mitigation ratio is 2:1, which is only half of the typically required ratio of 4:1 for forested wetlands. In support of this reduced ratio, the applicant states that off-site mitigation will begin once the permit is issued, thereby offsetting both temporal and cumulative loss. Because it will take some years before the off-site mitigation is established and it is nearly 40 miles and two watersheds away from the impact area, it is unlikely to offset either the temporal or cumulative loss of wetlands.

Indiana has lost eighty-five percent of its wetlands, and large remaining tracts such as those present in the permit area are rare. In particular, forested wetlands are a declining resource. According to the National Wetland Reports, forested wetlands experience the greatest decline of all wetlands types. UMI asserts that the additional range of habitat types that would result from reclamation activities at the Seven Hills Mine site will be an improvement over existing conditions. However, given the high acreage of forested wetlands that would be lost, the time it takes for forests to mature, and the poor performance of mitigation on the nearby Somerville and North Millersburg mines, it is highly unlikely that the reclaimed areas will develop habitat that is more productive than what currently exists.

### **Federally Listed Species**

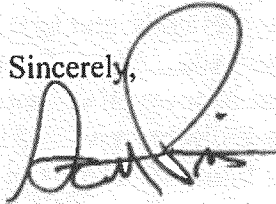
The proposed project is within the range of the federally endangered Indiana bat (*Myotis sodalis*), and the federally threatened northern long-eared bat (*Myotis septentrionalis*). An Indiana bat maternity colony from a known primary roost tree has been documented using the southern portion of the proposed permit area for foraging, and bat survey results indicate the presence of an additional maternity colony which forages on the northern end of the permit area. Although it has not been addressed in the permit application, at least one northern long-eared bat maternity colony has also been documented in the permit area; reproductively active females were captured during bat surveys. The proposed mining activity will temporarily or permanently eliminate approximately 690 acres of summer habitat for these species. The proposed restored forest will not become suitable habitat for many years, if ever.

The copperbelly water snake (*Nerodia erythrogaster neglecta*) is known to have reproducing

populations along the Pigeon Creek corridor, with known records of individuals in the proposed permit area. This species is federally listed as threatened in the northern part of its range, but listing was precluded in Southern Indiana due to the development of a Copperbelly Water Snake Conservation Agreement and Strategy, endorsed by the FWS, the IDNR, and the Indiana Coal Council (Agreement). Even though it has expired, the Agreement has proven effective in avoiding impacts to and conserving copperbelly water snake habitat. This permit application is the first action that the FWS is aware of that would not follow the tenants of the Agreement. This type of mining activity in prime habitat could cause the FWS to re-evaluate listing of the southern population of the copperbelly water snake.

In summary, the FWS considers the Ohio River, Pigeon Creek, and the Pigeon Creek floodplain to constitute productive and valuable public resources which serve significant natural biological functions, including flood control, water quality, food chain production, general habitat, and nesting, spawning, rearing and resting habitat for aquatic and land species. As defined by the Section 404(b)(1) Guidelines, we consider the site to be a Special Aquatic Site that possesses special ecological characteristics of productivity, habitat, wildlife protection and other important and easily disrupted ecological values. Therefore, the U.S. Fish and Wildlife Service requests that this permit be denied. Pursuant to part IV, Paragraph 3(a) of the Memorandum of Agreement Between the Department of the Interior and the Department of the Army on Section 404(q) of the Clean Water Act dated December 21, 1992, it is the opinion of the Department of the Interior that the project may result in substantial and unacceptable impacts to aquatic resources of national importance.

Sincerely,



Scott E. Pruitt  
Supervisor

#### Enclosures

cc: Martha Clark-Mettler, IDEM  
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